ORISSA HIGH COURT
CUTTACK

JAIL CRIMINAL APPEAL NO. 54 OF 1997

From the judgment dated 28.02.1997 passed by Sri B.K. Nayak, Addl. Sessions Judge, Balangir in Sessions Case No.65/21 of 1996.

Kanjaru Bariha ..... Appellant

Versus

State of Orissa ..... Respondent

For Appellant - Mr. S. B. Panda,

For Respondent - Mr. Suraj Mohanty,
Addl. Standing Counsel

PRESENT:-

THE HON'BLE MR. JUSTICE P.K.TRIPATHY
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 11.10.2006

Heard.

2. Accused in Sessions Case No.65/21 of 1996 of the court of Addl. Sessions Judge, Balangir has filed this appeal from jail challenging to the judgment dated 28.02.1997 by which the trial court convicted him for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life.

3. Prosecution case is that on 09.03.1996 in the morning hours between 9 and 10 a.m. accused allegedly assaulted his daughter-in-law, Rajani, the deceased, by means of an axe (M.O.I) and by dealing

repeated blows severed the head from the trunk. That occurrence was witnessed by Goutam Bariha (P.W.2) being a neighbour of the accused. He also snatched away the axe from the hands of the accused. Another co-villager Raghunath Putel (P.W.4) witnessed the snatching of the axe by P.W.2 from the accused. Villagers detained the accused in the clubhouse of the village, police was informed by Budhu Seth (P.W.1), he lodged the FIR (Ext.5) and thereafter the Officer in-charge of Khaparakhol P.S. (P.W.5) took up investigation. In course of such investigation, the head and trunk of the deceased, after inquest, were sent for post mortem examination and Dr. R.N. Tripathy (P.W.3) together with another doctor conducted post-mortem examination and submitted the report, Ext.3. They also examined the axe produced with the query if that could have been the weapon of offence and the opinion report (Ext.4) was submitted in the affirmative. Blood stained earth, wearing apparels of the accused and deceased besides some other relevant materials seized in course of investigation were sent for chemical analysis and serological test by the State Forensic Science Laboratory at Rasulgarh. After completion of investigation, charge-sheet was submitted against the accused for the offence under Section 302 IPC. Charge was framed for the said offence, accused pleaded not guilty and claimed for trial. In course of trial, prosecution examined the aforesaid five witnesses and relied on the documents marked Exts.1 to 13 and the Material Objects, M.Os.I to III, out of which the axe is M.O.I. Accused did not adduce any evidence in support of his defence plea of denial. On assessment of evidence on record, learned Addl. Sessions Judge found the evidence of P.W.2, the sole eye witness to the occurrence to be true and trust worthy and corroborated by the evidence of P.Ws.3 and 4 on all material aspect. Accordingly, he held the accused guilty of the offence of murder and convicted and sentenced him in the manner indicated above.

4. While challenging the aforesaid order of conviction, Mr.Panda, learned counsel engaged by the Legal Aid submits that evidence of P.W.2 is not acceptable inasmuch as his evidence is not true and trust worthy and that prosecution did not produce other eye

witnesses and circumstantial evidence from other sources. That is the bone of contention so as to discredit the prosecution version and to challenge the basis of finding of the trial court.

Mr. Mohanty, learned Addl. Standing Counsel, however, wholeheartedly supports the impugned judgment and argues to maintain the order of conviction and in that process replies to the contentions raised by the appellant.

5. On perusal of the evidence on record, the charge and the finding recorded by the trial court besides the aforesaid argument, we find that the trial court as well as the counsels appearing for the parties have missed one significant point that the trial court has not categorically recorded a finding if the deceased suffered a homicidal death. Such casual approach should have been avoided. In the above context, we may mention that in paragraph 7 of the judgment trial court has stated that evidence of P.W.3 proves that accused killed the deceased, but such fact was noted by the trial court in the context of appreciating evidence of P.W.2. Keeping in view provision of law in Section 302 read with Section 300 IPC, it is the duty of the court to find out if the deceased suffered homicidal death inasmuch as non-homicidal death is not punishable under Section 302, IPC. Be that as it may, since this Court has also jurisdiction to record finding on the basis of evidence on record, we refer to the evidence of P.W.3 and we find that the said doctor has given evidence that there were as many as four incised injuries on and around the neck region, which resulted in severing the head from the trunk. It has been categorically mentioned in the post mortem report that the cause of death was due to haemorrhage and shock because of cutting of large vessels of the neck and spinal cord. Thus, it has been proved beyond doubt that the deceased suffered a homicidal death.

6. So far as proof of charge against the accused is concerned, evidence of P.W.2, the solitary eye witness to the occurrence, clinches the issue against the accused. Contention of the appellant is that non-production of other eye witnesses is detrimental to the

prosecution case. That argument is heard to be rejected, inasmuch as there is lack of evidence that any other person was eye witness to the occurrence. Apart from that, trial court in paragraph 9 of the judgment while answering to such an argument raised in the court below has rightly observed that it is the quality and not the quantity of the evidence which matters most in a criminal trial. Evidence of P.W.2, when he states about the accused, as the author of the crime, has remained unshaken and that proves the charge of murder against the appellant. Seizure of the weapon of offence and consequence of non-detection of group of human blood have been considered by the court below and reconsideration of the same, in the absence of illegality, is not necessary. In the written notes of submission, learned counsel for the appellant has also raised several other points, but none of them has any merit. For example, the trial court has not referred to Ext.13 nor has it recorded any finding against the accused on the basis of that report, yet submission has been made challenging the correctness of the report from the S.F.S.L. (Ext.13).

7. Be that as it may, as discussed above, we find that once the deceased suffered homicidal death and it has been proved that accused is the author of that crime, under such circumstances, when we do not find any illegality or perversity in the finding of guilt recorded against the appellant by the court below, there is no reason to interfere with the impugned order of conviction and the sentence. The Jail Criminal Appeal is accordingly dismissed.

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P.K.Tripathy,J.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
October 11, 2006 / ***Samal***